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July 28, 2004

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3 TN REGULATORY AUTHORITY  
DOCKET ROOM

VIA HAND DELIVERY

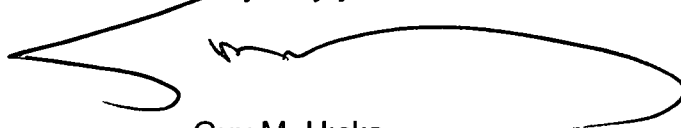
Hon. Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996*  
Docket No. 04-00186

Dear Chairman Miller:

Enclosed are the original and fourteen copies of BellSouth's *Motion for Summary Disposition and Expedited Relief*. Copies of the enclosed are being provided to counsel of record

Very truly yours,



Guy M. Hicks

GMH:ch

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

In Re: *Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996*

Docket No. 04-00186

**BELLSOUTH'S MOTION FOR  
SUMMARY DISPOSITION AND EXPEDITED RELIEF**

**BACKGROUND**

BellSouth Telecommunications, Inc. ("BellSouth"), through its undersigned counsel, submits this Motion for Summary Disposition and Expedited Relief. This case is ideal for an expedited, summary disposition on a paper record without a hearing. The issues before the Authority are straightforward – Covad initiated this docket on June 23, 2004, invoking the Authority's jurisdiction pursuant to Sections 12 and 16 of the parties' Interconnection Agreement ("Agreement"). Sections 12 and 16 of the Agreement address contract modification and dispute resolution and allow either party to seek renegotiation of language within the Agreement when legal action materially affects such terms; in the event the renegotiation effort is unsuccessful, either party may petition the Authority for resolution.

The legal action that gave rise to Covad's petition occurred on August 21, 2003, when the Federal Communication Commission ("FCC") issued its *Triennial*

*Review Order*.<sup>1</sup> In the *Triennial Review Order*, the FCC eliminated many of the unbundling requirements under § 251 of the 1996 Act. While certain portions of the *Triennial Review Order* were reversed on March 2, 2004 by the United States Court of Appeals, for the District of Columbia Circuit, other findings of the FCC, including its conclusions concerning line sharing, were upheld.<sup>2</sup>

BellSouth responded to Covad's petition on July 19, 2004, requesting that the Authority address this as a petition for dispute resolution rather than as a petition for arbitration ("Response"). The issues before the Authority present legal questions, and no hearing is required to resolve this matter, which can and should be addressed efficiently and expeditiously.

## DISCUSSION

Both parties appear to acknowledge that expedited treatment of this matter is appropriate – in petitions filed in other BellSouth states, Covad requested expedited relief, and BellSouth acknowledged expedited relief was appropriate in its Response. The rules enacted pursuant to *Triennial Review Order* became effective on October 2, 2003. In relevant part, 47 C.F.R. § 51.319(a)(i)(B) allows Covad to continue adding new line sharing customers until October 2, 2004. The federal rules also detail the rates applicable to line sharing and further provide that

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<sup>1</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "TRO"), reversed in part on other grounds, *United States Telecom. Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

<sup>2</sup> *USTA II*, 359 F.3d at 585 ("[w]e therefore uphold the Commission's rules concerning hybrid loops, FTTH, and line sharing on the grounds that the decision not to unbundle these elements was reasonable, even in the face of some CLEC impairment, in light of evidence that unbundling would skew investment incentives in undesirable ways and that intermodal competition from cable ensures the persistence of substantial competition in broadband.").

as of October 6, 2006, an ILEC "is no longer required to provide a requesting telecommunications carrier with the ability to engage in line sharing . . . ." 47 C.F.R. § 51.319(a)(i)(B).

Without an immediate modification to the parties' Agreement, however, Covad may maintain that it has no limitation on its ability to continue adding new line sharing customers after the FCC-imposed October 2, 2004 cutoff. Likewise, without an immediate modification to the Agreement, Covad can arguably continue to avail itself of rates that provide it with an "irrational cost advantage over competitive LECs purchasing the whole loop and over the incumbent LECs." *Triennial Review Order*, ¶ 260. Neither of these outcomes is consistent with the *Triennial Review Order*.

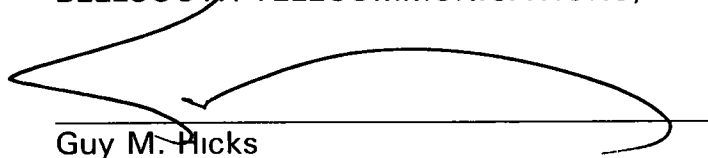
Finally, the parties are currently in the process of negotiating the terms of a replacement interconnection agreement as well as discussing modifications required as a result of the *USTA II* decision. Consequently, a decision that addresses the immediate changes necessary as a result of the *Triennial Review Order* would provide helpful guidance to the parties in ongoing negotiations.

### **CONCLUSION**

BellSouth respectfully requests that the Authority enter an immediate procedural and scheduling order setting dates for (1) the submission of initial briefs on the merits; (2) the submission of reply briefs and proposed orders; and (3) a full Authority decision. BellSouth has notified counsel for Covad of this motion; as of the time of filing Covad has not notified BellSouth of its position concerning this request.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A large, stylized handwritten signature in black ink, appearing to read 'Guy M. Hicks', is written over a horizontal line.

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## CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2004, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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